

JOSEPH P. RUSSONIELLO (SBN 44332)
 United States Attorney
 JOANN M. SWANSON (SBN 88143)
 Chief, Civil Division
 MICHAEL T. PYLE (SBN 172954)
 Assistant United States Attorney

U.S. Attorney's Office/Civil Division
 450 Golden Gate Avenue, 9th Floor
 San Francisco, California 94102-3495
 Telephone: (415) 436-7322
 Facsimile: (415) 436-6748
 E-mail: michael.t.pyle@usdoj.gov

Attorneys for Defendant Elaine Chao, Secretary of Labor

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

RICHARD GAYTAN,

 Plaintiff,

 v.
 ELAINE CHAO, Secretary of Labor,

 Defendant.

No. C 07-6367 VRW

**[PROPOSED] ORDER GRANTING
 DEFENDANT ELAINE CHAO'S
 NOTICE OF MOTION AND MOTION
 TO DISMISS**

Date: December 4, 2008
 Time: 2:30 p.m.
 Hon. Vaughn R. Walker

Defendant Elaine Chao, Secretary of Labor's motion to dismiss having regularly come on for hearing before the Court, and having read and considered the papers submitted in support thereof and in opposition thereto, and the parties having been afforded the opportunity to be heard, and good cause appearing therefor,

IT IS HEREBY ORDERED that the Defendants' motion to dismiss Plaintiff's claims about the Veteran's Judicial Review Act ("VJRA") and any other claims other than an alleged violation of the Rehabilitation Act of 1973 is granted with prejudice. The Court dismisses

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1 Plaintiff's claims that the VJRA is unconstitutional on the grounds that:

- 2 1. The Secretary of Labor is not a proper defendant for such a claim because it is the
3 Department of Veterans Affairs ("VA") and the Secretary of the VA who have
4 responsibility for the VJRA
- 5 2. Plaintiff lacks standing under Article III of the United States Constitution and the
6 rules for prudential standing because he does not allege any harm that he has
7 suffered with regard to the VJRA and in fact explicitly alleges in his complaint
8 that he has been determined to have a 100% disability rating from the VA. *See*
9 *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-
10 81 (2000); *Look v. United States*, 113 F.3d 1129, 1130 (9th Cir. 1997); *Elk Grove*
11 *Sch. Dist. v. Newdow*, 542 U.S. 1, 11-12 (2004).
- 12 3. Plaintiff has not, and can not, allege any basis to show a waiver of sovereign
13 immunity so as to allow his claim to proceed. *See, e.g., Dep't of the Army v. Blue*
14 *Fox, Inc.*, 525 U.S. 255, 261 (1999).

15 The Court also dismisses Plaintiff's claims other than an alleged violation of the
16 Rehabilitation Act, including, but not limited to Plaintiff's claims that "Undo Justice Aggravated
17 PTSD," "Unwarrented [sic] Memorandum by Georgia Martin," "Unwarrented [sic]
18 Memorandum and Methods by Sarah Nelson" and "Wrongful Termination Based on PTSD by
19 Woody Gilliland." *See* Complaint at pages 6-9; *Balisteri v. Pacifica Police Dep't*, 901 F.2d 696,
20 699 (9th Cir. 1990) (court should grant a motion under Rule 12(b)(6) when there is either a "lack
21 of cognizable legal theory" or the "absence of sufficient facts alleged under a cognizable legal
22 theory").

23 **IT IS SO ORDERED.**

24
25 DATED:

26 Hon. Vaughn R. Walker
United States District Chief Judge

27
28 C 07-6367 VRW

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